

The History, Overview and Application of State and Federal Disability Access Laws and Regulations[©]

An Informational Guide



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Introduction

Disabilities at some time will touch all of us. You might be one of the lucky ones who live to the ripe old age of 97. Sure, you smoked a pack of cigarettes a day, never exercised and ate whatever you wanted. Some of us can do this. Most can't. It is always amazing when we do presentations and ask the audience "How many of you have a family or friend who is disabled?" A sea of hands goes up as people finally start to "get it".

To really think about access requires a change in consciousness. Rather than thinking about "the disabled", think about a family member, friend or relative who might be affected by the decision you will make today concerning granting that "exception" or letting the owner off the hook for being several inches shy on her toilet stall size. People with disabilities might experience discrimination in our society, but disabling conditions don't discriminate against any of us. Disabilities affect all genders, all social classes, all races and all religious denominations.

Today, people with disabilities are increasingly entering the mainstream of American life. As a society, we have not achieved universal accessibility yet, but things are getting better. Thirty years ago, conditions were different for disabled people than they are today. Disability was considered something to be ashamed of. It was common for many families to hide disabled members because having such a family member was an embarrassment. Many disabled persons were routinely institutionalized. Society placed the onus on the individual to "overcome" or conceal the presence of a disability as a prerequisite to community participation or success in becoming employed. The concept of removing architectural or other barriers was never considered. It was the disabled person's fault that they couldn't function within the community, not the fault of the created architectural/societal conditions. People with disabilities occupied the lowest depths of the social and economic strata. This concept can be traced to the origin of the word handicap, from "hand-in-cap" or the image of someone begging or asking for a handout with their cap in their hand. For this reason, today the majority of persons with disabilities consider the use of the word handicap a derogatory term.

Although social policies existed prior to the early sixties to care for disabled people through social welfare, most policy at that time was based on what is referred to as the Charitable-Rehabilitation Model. Under this social model it was automatically assumed disabled people were sick, could never work, have families or generally live a normal life and really were of no value to society. The emphasis was placed on the individual to change in order to conform to society's norm.

Rather than openly acknowledging the presence of a disability, in order to succeed, disabilities were hidden from view. Franklin D. Roosevelt was probably the best examples of hiding a disability for success. President Roosevelt was never seen by the public in his wheelchair (with the exception of one photograph). Having polio and unable to walk, Roosevelt developed a technique to ambulate with the assistance of

heavy braces and the use of assistants on either side holding him upright. Even Roosevelt's Presidential yacht, the Potomac, had the lift that took him from deck to deck hidden from view so visitors on the yacht wouldn't see it. Despite his significant disability, FDR is viewed as one of our country's greatest leaders. The 1960's and 1970's represented a time where many changes to our society occurred. Typical stereotypes and lifestyles were challenged. As part of this social change, minority groups began to assert their constitutional rights whereby gaining inroads into non-traditional areas. This civil rights model eventually led to the disability rights movement which was based on the African American civil rights movement of the 1960's. Using similar tactics, organized action was employed to pressure government and policy makers to enact laws to integrate and provide opportunities for disabled citizens.

The Laws

During this period, there were three major federal laws passed which were instrumental in shaping the disability policy we have today:

The Civil Rights Act of 1964

The federal Civil Rights Act prohibits discrimination on the basis of race, religion, gender or national origin. This law created an important change in that the government now recognized that minority groups in this country were treated differently and that legislation was necessary in order to correct long standing discriminatory behavior. The Civil Rights Act provided a model for the development of future equal opportunity laws dealing with accessibility.

The Architectural Barriers Act of 1964

The first accessibility law was the Architectural Barriers Act of 1968 (ABA). Prior to the ABA, federal agencies used a voluntary policy that suggested that newly constructed or remodeled federally funded buildings were to be accessible. Voluntary action proved ineffective, so in 1968, this new law was passed in order to expedite architectural barrier removal.

The federal Architectural Barriers Act was the first law to recognize that structural barriers in the built environment prevented disabled persons from equal participation in federal programs. The ABA became the base for all other architectural accessibility laws in use today.

The Rehabilitation Act of 1973

The federal Rehabilitation Act was passed by Congress in 1973. Like the 1964 Civil Rights Act, Section 504 of the Rehabilitation Act now prohibited discrimination "on the basis of disability" in federal programs or programs receiving federal financial assistance. At that time "discrimination on the basis of disability" was not clearly

defined. Federal agencies were given the responsibility to develop regulations to fully define and implement Section 504.

It is interesting to point out that the federal government delayed issuing the first 504 regulations until 1977. Using a strategy successful in the Civil Rights and Women's Rights movements, a "sit-in" by a dedicated group of disabled activists in the San Francisco federal building eventually forced the government to issue these regulations

In addition to non-discrimination language, Section 504 contains an architectural component requiring newly constructed or altered federally funded buildings to be made accessible

California Accessibility Law

California's accessibility laws and regulations are based on long standing state legislation, which define what accessibility is and how it is to be applied.

Many people think that accessibility requirements in California began in 1982 (with the adoption of California Building Code). California has had regulations since 1968 requiring accessibility for publicly funded buildings and since 1970 for privately funded buildings.

Publicly Funded Buildings

Shortly after the passage of the 1968 federal Architectural Barriers Act, California passed a similar law requiring access in publicly funded buildings. This law, Government Code Section 4450, took effect in 1968.

Government Code section 4450 requires that publicly funded buildings and facilities be *accessible to and usable by persons with disabilities*. In 1969 however, there were very few resources that defined how to provide access to the built environment. At that time, the California Legislature looked to the Americans Standards Association (ASA) for guidance. In 1961, ASA had issued a set of standards (A117.1), which outlined accessibility in buildings. Based on research conducted in the 1950's, this 11-page document is the basis for all accessibility codes/regulations that are used today. Government Code 4450 requires the State Architect to develop and submit proposed building standards to the California Building Standards Commission for approval and adoption.

Government Code 4450 was later amended to say that in no case shall the State Architect's regulations and building standards prescribe a lesser standard of accessibility or usability than provided by the Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336).

Interim Accessibility Standards 1970-1982

From approximately 1970, state law specified that the 1961 ASA standards were to serve as the state's interim accessibility standards until such time as the State Architect could write additional regulations. The 1961 ASA Standards served as the referenced accessibility standard in California until those new access codes were adopted in 1982.

In 1971, Government Code, Section 4456 was added to clarify the scope of the Government Code requirements as applied to altered buildings (a similar section 19959 was added to the California Health & Safety Code in 1973 which extended this requirement to privately owned/funded buildings). In this case, the area of alteration, path of travel from public way and/or parking and sanitary facilities, drinking fountains and public telephones serving the remodeled area needed to be made accessible.

Privately Funded Buildings

In 1970, Health & Safety Code §19955 was adopted by the State Legislature. Accessibility requirements for publicly funded facilities were now extended to privately funded buildings (non-governmental). Buildings such as retail stores, offices and shopping malls were now covered by state accessibility laws.

In 1973, an amendment was made to the Health and Safety Code (§19959) to clarify that alterations to privately funded buildings would not trigger a requirement to make the entire building accessible, but rather the area of remodel, the path of travel to it and the associated sanitary facilities, drinking fountains and telephones. This amendment was integrated into the California Building Code scoping requirements for alterations to existing buildings and facilities.

Recreational Facilities and Playgrounds, Public Resources Code §5070-5411

This state regulation was adopted to assure that recreational facilities including trails, bikeways, boating docks, playgrounds (and play equipment, "as accessible equipment becomes available") were designed and built to be accessible. That accessibility included a "path-of-travel" to the equipment and the ability to transfer onto and through the play structure itself.

Unruh Civil Rights Act: Accessibility Barriers are a Civil Rights Violation

Prior to the passage of the Americans with Disabilities Act (ADA-a civil rights law), California developed a precursor. The Unruh Civil Rights Act was adopted by the state legislature to prohibit discriminatory practices or actions. The provisions of the Act are found in the California Civil Code.

Civil Code Section 54.1 specifies that accessibility needs to be provided *in a manner that is applicable alike to all persons*. For example, if non-disabled theater patrons enter a facility through the front door, people with disabilities should be able to do the same.

Similarly, in a restaurant, disabled patrons should not be expected to enter through the kitchen or back alley garbage area, simply because there are steps at the front door.

Unlike the Americans with Disabilities Act, the California Civil Code allows for punitive and compensatory damages in accessibility lawsuits. Therefore, entities that are not in compliance could be faced with not only the cost to remove the accessibility barrier, but could be required to pay damages and attorney's fees as well.

California: The California Building Code (CBC) Accessibility Standards (California Code of Regulations)

In the late 1970's, work began to develop the California accessibility standards, which were state amendments to the model codes. After a series of public hearings, in 1981 these regulations were adopted by the state Building Standards Commission and took effect in 1982.

The format of The California Building Code is the same as that published in the International Building Code (IBC). As discussed earlier, Government Code, Section 4450 specifies that the regulations must be consistent with the latest edition of the UBC and that the State Architect has the authority to adopt additional requirements as necessary to assure that an accessible environment can be created in new and remodeled buildings and facilities.

California's Access Codes Serve as Minimum Standards

The state legislature recognized that the referenced standards for accessibility should not be the "lowest common denominator". The California Building Code accessibility sections are by law, a minimum standard by which to define accessibility. In most cases, deviations that lessen these minimums will not provide a barrier-free built environment.

This concept is reflected in case law, in which courts have taken a very broad view of the accessibility mandates. As a result, a number of private and public entities have paid the price for limited enforcement by local building departments or improperly designed structures by licensed design/construction professionals. Additionally, since Congress adopted the Americans with Disabilities Act in 1990, the California Building Code in many instances is less restrictive and doesn't meet the mandates of that federal civil rights law.

When using The California Building Code, weight should be given to this fact. Designers and enforcement officials encounter problems when they fail to see this legal/civil rights connection and view their responsibility to meet access requirements simply as meeting the "building code".

The Unruh Civil Rights Act prohibits discriminatory practices in California. These provisions are contained in Section 54 of the California Civil Code. Section 54.1 makes the denial of accessibility in Public Accommodations a violation of Civil Rights Law.

When applying the code it is important to recognize the *intent* of these statutes, to develop an environment which is *accessible to and usable by* disabled persons. Case law has established that because a particular item may not be addressed in a particular code section does not mean the item is exempt from being made accessible.

California's Access Codes Serve as Minimum Standards

In 1990, President Bush signed into law the Americans with Disabilities Act (ADA). The ADA is modeled on many of the concepts contained in the Civil Rights Act and Section 504, however the requirements triggered by those regulations were now extended to the private sector and eliminated the requirement for public and private agencies to receive financial assistance to assure that access would be provided.

Similar to California accessibility law, the Americans with Disabilities Act of 1990 or "ADA" provides civil rights protections for persons with disabilities and requires accessibility to buildings and facilities and the "goods, services and programs" within. This requirement supersedes the requirement under the CBC to make a facility accessible only if there has been modification to an existing structure. There are five major titles of the ADA. For the purposes of this document, Titles II & III will be reviewed here. Title II covers state and local governments and Title III covers public accommodations and commercial facilities. Another way of looking at this in relation to state law is that Title II covers publicly funded buildings and Title III covers privately funded buildings.

Title II of the ADA requires that state and local government **programs** be accessible. Presently, Title II allows a choice of either the Uniform Federal Accessibility Standards (UFAS) or The Americans with Disabilities Accessibility Guidelines (ADAAG) to be used as architectural standards.

Title III of the ADA covers almost everything in the private sector, with the exception of privately funded housing. Title III requires that public accommodations and commercial facilities reasonably modify their policies and practices so as to provide accessibility. Title III specifies ADAAG as the architectural standard to be used for alteration or new construction.

One would think that because the ADA is federal law it would supersede state accessibility law. This is not the case. Congress recognized that many states, including California and others had excellent protections already in place. What this means for a designer or builder is that he/she must look to both the California Building Code and ADAAG when designing or constructing buildings or facilities and use the most “restrictive” requirements from each.

Unlike The California Building Code, the accessibility provisions of the ADA are not enforced by building departments. Instead, the onus is on the designer, builder and owner to ensure the ADA requirements have been met for a particular project. The U.S. Department of Justice is the enforcement agency for the ADA.

A 1993 amendment to Government Code 4450 & Health & Safety Code 19955 specifies that California cannot adopt any building standards, which are less restrictive than the ADA accessibility guidelines.

Federal Certification of the California Building Code

The ADA contains a mechanism whereby state or regional codes may be certified as meeting the provisions of ADAAG.

Since 1993, the state of California has been working to integrate many of the ADA provisions into the California Building Code. The assumption here is that eventually The California Building Code will include the more restrictive ADA provisions and therefore if plans are checked and permits approved by local jurisdictions, the designer, builder and owner will have some assurance that the ADA has been met.

In 2004, the federal Department of Justice completed their preliminary technical review of California's certification submittal. The 2007 California Building Code has incorporated many of these changes. The Division of the State Architect is in the process of developing an additional certification adoption package that will eventually go to the Building Standards Commission.

ADA Enforcement

Unlike the California Building Code provisions, the ADA is enforced through administrative complaints to federal agencies (US Department of Justice, Department of Transportation, etc.) or by private lawsuits. As most local building departments do not enforce ADA, the responsibility for project conformance rests with the architect, builder and property owner.

Conclusion

Because accessibility is a complex issue, adhering to the following suggestions may be helpful when designing buildings and facilities which are accessible to and functional for disabled persons.

Accessibility is like an electrical system in that conductivity needs to be provided. If there is a break in the line, circuit failure will occur. For example, an accessible drinking fountain is not much good if you are unable to get through a door to where the fountain is located.

It is important to remember that the codes come from laws. One must always look to the intent of the law in this regard. Similarly, if The California Building Code or ADAAG do not specifically address an item, assume that feature still needs to be accessible.

Finally, it is important to remember that accessible environments benefit everyone. Curb ramps serve parents pushing baby strollers, elderly persons with carts, bicycle riders and other members of the general public. Making a business accessible can tap a previously untapped revenue source. Enabling a disabled person to work at an accessible workstation decreases the burden on government assistance and contributes to our community as a whole.

Biographical Sketches of Authors

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Peter Margen is recognized for his expertise in the area of disability policy, universal design and the Americans with Disabilities Act (ADA). Peter has over 24 years of experience specializing in disability compliance issues. His work experience includes regulation and policy development, leading training programs, evaluating buildings and facilities, plan review and identifying effective program and/or structural solutions to accessibility issues.

His work experience includes directing the Access California Program - one of the nation's first technical resource centers on accessibility. From 1992-1997 Peter served as the ADA coordinator for the City of Oakland, California. Peter has served on the California Building Standards Commission, Accessibility Advisory Committee.

Since 1997, Mr. Margen has been in private practice, providing consulting services on hundreds of public and private projects. Under contract to the California Division of the State Architect Mr. Margen has assisted in securing ADA certification of the California State Building Code from the federal Department of Justice.

Mr. Margen has served as an expert witness in many landmark accessibility cases including *Barden v. City of Sacramento*, *Arnold vs. United Artists Theaters*, *Lieber v. Macys* and others.

Richard Skaff, Executive Director

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Richard Skaff has a 28-year background creating environments accessible to people with disabilities. In 1978, Richard became the founding Executive Director of the Marin Center for Independent Living. Richard was elected to and sat as a Town Council member and Mayor of the Town of Corte Madera from 1981 through 1985 and become a Board member of the Ross Valley Paramedics, an agency he created during his tenure on the Council. From 1989-1990 he served as a Chief Building Inspector for the San Francisco Bureau of Building Inspection, responsible for oversight of the Bureau's enforcement of State access codes. In 1990 Richard was appointed as the ADA Coordinator for the San Francisco Department of Public Works. In 1999 Mr. Skaff, at the request of the Mayor of San Francisco, moved from the Department of Public Works and was appointed the Deputy Director of the newly opened Mayor's Office on Disability that he helped create. Richard brings the unique experience of effectively implementing accessibility regulations in public entities. In his position as Deputy Director, he oversaw the development of access code training for all City departments, was responsible for the development of City-wide access policies, project design review and approval and oversaw the resolution of public complaints regarding physical accessibility violations within City facilities.

Richard has participated as member in State and Federal code committees, including the U.S. Architectural Transportation Barriers Compliance Board's Recreation, and Passenger Vessel Access Committees. He is presently a member of the Access Board's Right-of Way Access Advisory Committee and a member of the California State Architect's Universal Design Standing Committee as well as the State Architect's Advisory Committee for the Evaluation of Detectable Warning and Directional Surface Material. Most recently, Richard presented a training on evacuation for the 2004 State and Provincial Fire Marshal's Forum at the NFPA Headquarters in Boston and a general overview of accessibility requirements in the United States at the Fourteenth Annual Biennial Conference of Architects in Quito, Ecuador. As part of that event, Richard participated as a speaker on an international panel of Mayors discussing city planning issues.